

MIRRAR LIVING TRADITION IN DANGER
WORLD HERITAGE IN DANGER

**Submission to the World Heritage
Committee Mission to Kakadu ,**

October 1998



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The Gundjehmi Aboriginal Corporation

Gundjehmi Aboriginal Corporation is an organisation established, managed and controlled by the Mirrar independently of any agenda influenced by mining. The establishment of Gundjehmi Aboriginal Corporation occurred due to the Mirrar people's dissatisfaction with jurisdictional and institutional arrangements on their land, including their ability to exercise their rights under the *Aboriginal Land Rights (Northern Territory) Act, 1976*.

It was the intention of the Mirrar to establish Gundjehmi Aboriginal Corporation to provide both for its own members and for those Aboriginal people affected by the Ranger uranium mine consistent with their cultural obligations. It was intended Gundjehmi Aboriginal Corporation would:

- assist with housing and community services;
- raise funds where appropriate for furthering their objects;
- publish and disseminate information;
- maintain culture and protect heritage;
- assist in establishing an economic base;
- represent the interests of members in the development of regional agreements and other matters that will further self-determination;
- assist with education, family programs, and community development.

Gundjehmi Aboriginal Corporation has not sought to duplicate any of the present functions of the existing organisations operating in the region. Gundjehmi Aboriginal Corporation exists to assist the Mirrar participate in informed decision-making regarding all matters and activities in relation to their land.

As reflected in clause 6.1 of the Gundjehmi Aboriginal Corporation Rules, Gundjehmi Aboriginal Corporation assists the Mirrar to protect and advance their rights and interests; and as reflected in clause 7.2 of the Rules to ensure that the Mirrar responsibilities and obligations to other Aboriginal people are carried out.

Gundjehmi Aboriginal Corporation does this by undertaking activities in accordance with the direction given by Mirrar people through their elected governing committee.

What Mirrar hope to achieve:

Mirrar should be able to control and manage development and other activity on their land, by obtaining high quality advice and information in order to make proper decisions. Mirrar want to exercise their rights and interests in relation to country and it should not have to be a struggle or a burden on Mirrar to seek assistance in exercising their rights and interests or to obtain recognition for their rights and interests.

Mirrar want to ensure that development and other impacts on Mirrar people and Mirrar country are properly considered and that Mirrar have a full and proper opportunity to provide input into decisions in relation to any such development or other forms of impacts and that a proper legal relationship is established between the proponent and the Mirrar.

Mirrar have cultural responsibilities and obligations to other clan groups of the region and this is reflected in Mirrar's concern for the rights and interests of all Aboriginal groups in the region.

Constraints on Mirrar

Mirrar have experienced and are experiencing a whole range of social and economic problems including poverty, destitution, misfortune, disadvantage, distress, dispossession and suffering.

Mirrar have certain legal rights to land, and these rights are recognised through the *Aboriginal Land Rights (NT) Act 1976* and the *Native Title Act 1993*. Mirrar rights and interests and their ability to carry out their obligations and responsibilities to country and people is constrained by:

- the jurisdictions exercised on their country by a range of other organisations and agencies.
- imposed development on their land including the Ranger mine, and the town of Jabiru.
- that the use of their resources derived from the exploitation of their land is outside their control.
- the limited recognition of Mirrar authority by the organisations with activities on Mirrar land.
- by threats of further imposed development imposed by Government on Mirrar land, including the Jabiluka project and further development and expansion of the town of Jabiru.

Proposed Strategies

Gundjehmi Aboriginal Corporation is the legal entity of the Mirrar whose rights and interests arise from ownership of land in the region.

Gundjehmi Aboriginal Corporation asserts that the organisations in the region are here on Mirrar country because the Government has said they will be here. While the Mirrar understand the Government has certain obligations such as world heritage protection and monitoring of uranium, it must be understood that Mirrar have equally serious obligations and responsibility to the same country and these obligations and responsibilities predate the laws and powers of those organisations that exercise jurisdiction over Mirrar country.

Therefore it is recognised that most or all of the organisations that exercise jurisdiction in the region are the cause of many of the problems of the Mirrar and other Aboriginal groups and that there must be a reconstruction of the relationships between Aboriginal people and those organisations and this reconstruction involves a greater recognition of Aboriginal law and culture.

Aboriginal law and culture has been legally recognised by the High Court of Australia. The recognition of Aboriginal law and culture may mean:

- changes in the relations between Balanda and Bininj (such as the leases); Balanda and Balanda (the leases and agreements) and Bininj and Bininj.
- changing the current processes such as the way agreements are negotiated for and on behalf of Bininj, or the dissemination of information.

In the context of the above the Gundjehmi Aboriginal Corporation have been developing processes in which Mirrar can assert their law and culture.

Introductory Remarks - The Importance of Living Tradition

The Mirrar are Traditional Owners of country within the borders of Kakadu National Park. The natural and cultural values for which Kakadu is inscribed as a World Heritage Area are intrinsically linked to the living tradition of the Mirrar.

The following submission explores in considerable detail the dangers posed to Mirrar living tradition by the Jabiluka uranium mine and as such focuses on the cultural values of Kakadu National Park.

Accordingly, this submission **does not** specifically deal with dangers to the **natural values** of the Kakadu World Heritage Area posed by mining development. Nonetheless, the Mirrar wish to stress that the **natural values** of the Kakadu World Heritage Area are very important to bininj. The Mirrar have a connection to the environment which forms the basis of their cultural existence. For this reason the Mirrar urge the World Heritage Committee to take note of the inseparability of Mirrar and their environment and **apply** any findings in relation to environmental dangers to the following facts:

- Mirrar possess, occupy, use and enjoy Mirrar country
- Mirrar reside on Mirrar country
- Mirrar derive sustenance from the land and waters
- Mirrar hunt and gather food on the land and waters
- Mirrar bear and raise rear their children on Mirrar country
- Mirrar teach their children on and about Mirrar country
- Mirrar build and use shelters on Mirrar country
- Mirrar visit and camp at special or exclusive places on Mirrar country
- Mirrar hold ceremonies on Mirrar country
- Mirrar hold ceremonies about Mirrar country
- Mirrar maintain and pass on knowledge about Mirrar country
- Mirrar care for Mirrar country in keeping with various obligations
- Mirrar bury their dead on Mirrar country
- Mirrar share, exchange and trade resources from Mirrar country
- Mirrar travel across Mirrar country
- Mirrar protect Mirrar country from physical or spiritual danger

Mirrar will be examining the dangers that the Jabiluka uranium mine poses to their **living tradition** in the context the *Convention for the Protection of the World Cultural and Natural Heritage* and the *Operational Guidelines for the Implementation of the World Heritage Convention*. As such, it is worthwhile to briefly examine the concept of living tradition as it applies to the Kakadu inscription on the List Of World Heritage.

Kakadu National Park was (re-)inscribed on the World Heritage List in 1992 in accordance with two cultural criteria:

- OG 24(a)(i): represent a unique artistic achievement, a masterpiece of the creative genius and;
- OG 24(a)(vi): directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance.

At this time consideration was given to inscribing Kakadu under 24(a)(iii) which then stated:

- OG 24(a)(iii): bear a unique or at least exceptional testimony to a civilisation which has disappeared;

however this was considered inappropriate given the ongoing **living tradition** of the bininj civilisation in Kakadu.

To confirm that the notion of **living tradition** was a vital component of the cultural heritage renomination of Kakadu, the Australian Government clearly articulated in its 1991 submission to the World Heritage Committee for renomination of Kakadu on the World Heritage List that one of the six attributes which justified inclusion on the list under cultural criteria (i) and (vi) was that:

The cultural tradition demonstrated in the art and archaeological record is a **living tradition** that continues today. (emphasis added) (p.84)

The Australian Government submission reiterated this sentiment throughout, describing Kakadu as containing:

“...an especially rich collection of places, including sacred sites, that have significance to Aboriginal people today. Traditional beliefs and practices remain very important to daily life and rites and ceremonies continue to be practised. According to tradition, the Aboriginal relationship with the land is an amalgam of spiritual, economic and physical bonds. These bonds are inextricably interwoven and originate from a time that Aboriginal people refer to as the creation era. This is a belief system that perceives the past, present and future as interacting in an eternally dynamic relationship, affecting the affairs of men and women in their everyday lives...” (p.87)

It is important to note that since Kakadu Stage 3 was inscribed on the World Heritage List in 1992 the criteria for inclusion on the list have changed to reflect the importance of living tradition:

Operational Guideline 24(a)(vi) now reads:

OG 24(a)(vi): be directly or tangibly associated with events **or living traditions**, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance.

Operational Guideline 24(a)(iii) now reads:

OG 24(a)(iii): bear a unique or at least exceptional testimony to a **cultural tradition** or to a civilisation which is **living** or has disappeared. (emphasis added)

In addition, the World Heritage Committee has developed the concept of “cultural landscape” as a further category for inclusion on the World Heritage List. Cultural landscapes represent the “combined works of nature and man” designated in Article 1 of the Convention. The development of the cultural landscape concept is yet another recognition of the cultural significance of living traditions.

It is also worth noting that one of the three natural criteria for which Kakadu was inscribed on the World Heritage List was:

- ii) outstanding examples representing significant on-going geological processes, biological evolution and **man’s interaction with his natural environment** ; (emphasis added)

The natural criteria in the Operational Guidelines have now been amended and the concept of “interaction between humankind and its natural environment” has been removed from the natural criteria and is now the fundamental notion underlying the concept of “cultural landscape”. This cultural landscape is plainly evident in Kakadu where the living tradition of the Mirrar and other Aboriginal peoples is based on the inseparable and symbiotic relationship between bininj (humans) and country (environment).

Mirrar believe that these changes in the Convention to fully embrace the concept of living tradition reflect more accurately the cultural attributes for which Kakadu National Park is inscribed on the World Heritage List. Mirrar note that a genuine desire to formally update the inscription of Kakadu to reflect the new criteria has been demonstrated by the Kakadu Board of Management. The Board formally requested that the Commonwealth seek inscription as a cultural landscape in 1995. This written request was signed by Senior Traditional Owner of the Mirrar people, Yvonne Margarula. The Mirrar are disappointed that the cultural landscape inscription has not been progressed by the Commonwealth and has been hampered by the Northern Territory Government.

It is the Mirrar belief that any reasonable interpretation of the criteria relating to the Kakadu inscription clearly places living tradition at the heart of the cultural attributes for which Kakadu has been included on the World Heritage List. Therefore, a specific and proven danger to the continuance of living tradition in the Kakadu World Heritage Area is (subject to compliance with the Operational Guidelines) *prima facie* evidence of Kakadu being a World Heritage Area in Danger.

It is on this basis that the Mirrar will present their case to the UNESCO Mission for inclusion of the Kakadu National Park on the World Heritage in Danger List in conjunction with a range of corrective measures.

FACT ONE

The living tradition of the Mirrar, which is integral to the cultural values of the Kakadu World Heritage Area, is affected by mining activities in the Jabiluka Mineral Lease enclave.

It is important to note at the outset that those accustomed to European (balanda) notions of heritage, tradition, cultural landscape and land ownership need to adjust to very different Aboriginal (bininj) understandings of such concepts when examining living tradition in the Kakadu World Heritage Area.

One of Australia's most respected heritage experts, D.J. Mulvaney, has provided some important guidelines for balanda when considering bininj concepts of living tradition:

Expressed succinctly, their traditional world is a humanised landscape which is indivisible and immutable, and every natural feature has a name and meaningful mythological association. Place and person are inseparable, while past and present form a unity of on-going creation

Mulvaney also makes a very important point with regard to sacred or spiritual sites:

European legal agreements assume the disclosure of all relevant information. Yet Aboriginal custodians may withhold secret cultural information because much esoteric data normally is revealed only to appropriate clan elders upon ritual occasions. Awareness that ceremonial pathways of Dreaming ancestors or some adjacent dangerous sacred site may be impacted upon by proposed development may only dawn later...

A further complication is that those persons standing in a custodial role to Dreaming localities and stories may place themselves or their clan in danger by divulging information to inappropriate persons. So there exists a reluctance amongst elders (who alone are entitled to divulge information) to disclose all their knowledge to Europeans...To ignore these realities of Aboriginal custodianship and to assume that elders act like Europeans in legal matters is to place undue pressure on them. (From Mulvaney, D.J. "The Landscape of the Aboriginal Imagination and its Heritage Significance", Unpublished Paper, September, 1998)

It is on the interpretive basis described by Mulvaney, a balanda with considerable experience of talking to bininj, that the Mirrar ask the World Heritage Committee to consider their approach to examining the dangers posed to Mirrar living tradition by the Jabiluka uranium mine.

This is Mirrar Country

Mirrar country encompasses the Ranger and Jabiluka Mineral Leases, the mining town of Jabiru and parts of Kakadu National Park. This is confirmed by bininj law and by balanda law.

Bininj have verified the extent of Mirrar country on countless occasions. In the early 1980's this was "formalised" through the claims process of the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Mirrar were successful in demonstrating under Australian law their claim to land by satisfying the legislative requirements for proof of connection to their country through bininj law and custom. The Mirrar proved to the satisfaction of the Commonwealth that they had a common spiritual affiliation to their country; that they exercised primary spiritual responsibility for their country; and that they had the right to forage on their country. The Mirrar understand that other bininj continue to respect the extent of the Mirrar estate.

The Mirrar exercise their rights as Traditional Owners under two Aboriginal Land Trusts and benefit from *fee simple* title to most of their estate. The town of Jabiru and surrounds were excluded from the Kakadu Aboriginal Land Trust and are currently subject to a native title claim lodged in the Federal Court by the Mirrar.

The enclave boundaries of the Jabiluka and Ranger Mineral Leases are not recognised under bininj law. The mineral leases do not concur with any "borders" established by the Mirrar or other bininj. This has been reiterated in recent discussion between senior bininj at a meeting held in Kakadu where it was stated:

"A lot of argument is caused by balanda making lines on maps to show how Aboriginal land ownership is represented. It isn't like that...Arguments are forced on us when we are forced to make decisions in the interest of some group of balanda or government...we are continually forced and harassed until they get what they want." (minutes, Gundjehmi Aboriginal Corporation, 15/9/98)

In fact the concept of administrative borders is inimical to the Mirrar relationship with country and other bininj. Furthermore the Mirrar do not believe that any balanda have a legitimate right to carry out activities on country without Traditional Owner consent. No such consent exists for the Ranger Lease and Mirrar believe that no legitimate consent exists for the Jabiluka Mineral Lease.

Under both bininj law and balanda law the Mirrar are the only clan group with ultimate rights and obligations to the land within the Jabiluka excision. Other clan groups are affected by the area and the Mirrar owe responsibilities to these groups. These bininj would also be the beneficiaries of any royalties generated by a mining project. There are some non-Mirrar individuals who have important rights and obligations to this land as Custodians by virtue of Mirrar instruction to them.

Mirrar have rights and interests which arise from country and flow from Mirrar law and custom. These rights are recognised under *the Land Rights Act*. In exercising these rights and interests Mirrar are guided by their obligations and responsibilities to other bininj affected by Mirrar decisions about Mirrar country.

There are two main approaches to the way Mirrar view their responsibilities - looking after country (gunred) and looking after people (guhpleddi).

Gunred encompasses control of country including the prevention of both destruction of country and desecration of sites. It is also the recognition, assertion and promotion of cultural rights and the carrying out of living tradition on country.

Guhpleddi is intrinsically tied to gunred because bininj and country are as one. It encompasses an extremely complex set of relationships between Mirrar, other bininj and country.

The Mirrar and other bininj have dreaming tracks which traverse country. These dreaming tracks cross both the Jabiluka and Ranger Mineral Leases and the World Heritage Area. These spiritual connections to country should only be described by particular Traditional Owners and Custodians to particular people at particular times. (as per Mulvaney above)

The Mirrar and other bininj have many sacred sites all over country. These sacred sites exist within the Jabiluka and Ranger Mineral Leases and are interconnected with the spiritual and cultural significance of the entire Mirrar estate and other bininj country, including the World Heritage Area. Again, these spiritual connections to country should only be described by particular Traditional Owners and Custodians to particular people at particular times.

Some of the sacred sites on the Jabiluka Mineral Lease, including rock art and ancestral living areas, are recognised under balanda law inside the large areas of the lease registered by the Australian Heritage Commission (AHC). There are no current plans to mine in these AHC areas but the Mirrar believe these areas are nevertheless affected by mining activity. The entire Jabiluka Mineral Lease was covered by AHC listing until objections by mining companies saw the AHC areas reduced.

There are also sacred sites which are not afforded the “protection” of the AHC areas. One that has been publicly identified by the Traditional Owners and Custodians is the Boywek-Almudj site which is very close to the proposed Jabiluka uranium mine. There are many other sites on the Jabiluka excision which have not been identified by bininj for a range of cultural reasons. Some of these sites are at present being directly and severely impacted upon by the proposed Jabiluka uranium mine. Once again, these spiritual connections to country should only be described by particular Traditional Owners and Custodians to particular people at particular times.

The importance of sites of significance to the cultural values of Kakadu National Park was confirmed by the Australian Government in their 1991 World Heritage renomination document:

“...a major aspect of the past that affects the present and future is the creative behaviour of beings said to have travelled across the landscape when it was flat, featureless and lacking the presence of ordinary men and women. These beings are said to have moulded the landscape into its present form and to have established people’s languages and social institutions. Aboriginal people hold as significant features of the landscape that mark the temporary or permanent abodes of these beings. This system of beliefs gives Aboriginal people vital links with the land; the links continue through membership of a clan or local descent group. (p.88)

The Mirrar and other bininj have traditionally hunted, gathered, held ceremonies, lived and died at places all over the Mirrar estate, including the Jabiluka Mineral Lease. Balanda scientists have “proved” this by discovering ancient remains and rock art all over Mirrar country, including the Jabiluka Mineral Lease. The Australian Government believed one of the archaeological sites inside the Jabiluka Mineral Lease (Malakananja II) to be so important that it specifically referred to it when seeking inscription of Kakadu National Park on the World Heritage List.

Customary Aboriginal law is inextricably linked to country and ceremony. Laws are connected to places all over the Mirrar estate, including the Jabiluka Mineral Lease. These laws should only be explained by particular Traditional Owners and Custodians to particular people at particular times.

It is in these ways, and many others that can only be expressed by bininj in language, that the Mirrar living tradition, which is integral to the World Heritage values of Kakadu National Park, exists both inside and outside the non-bininj borders of the Jabiluka Mineral Lease. The Mirrar estate is a discrete cultural landscape within and connected to other cultural landscapes, including the cultural landscape of Kakadu National Park.

It would simply be a nonsense to suggest that the Mirrar living tradition, which helps comprise the World Heritage values of Kakadu National Park, is

intrinsically less significant within the comparatively recent borders of the Jabiluka Mineral Lease than it is in World Heritage Area.

It would equally be a nonsense to suggest that impacts associated with activities on the Jabiluka Mineral Lease (or anywhere else for that matter) which affect the Mirrar living tradition do not impact on the cultural qualities for which Kakadu has been inscribed as a World Heritage Area.

Mirrar Country in Danger - Living Tradition in Danger

The Mirrar believe that mining activity on the Jabiluka Mineral Lease presents a genocidal danger to their living tradition and therefore a specific and imminent danger to the World Heritage values of Kakadu National Park.

The Mirrar base this belief on their knowledge of land and culture inherited from ancestors since time immemorial and from their experiences of the Ranger uranium mine over the past twenty years.

To fully comprehend the significance of these dangers, it is imperative that the living tradition of the Mirrar people is not understood as just the source and support of Kakadu's cultural values - as simply the "infrastructure" for rare sites and cultural practices. The World Heritage Convention, in this instance, must be seen as protecting one of the few remaining islands of traditional culture from the relentless forces of development.

Furthermore, this protection should not be viewed as simply serving the cultural appetite of outside societies. Inscribing Kakadu for cultural values that are inextricably embedded in living tradition must be conceived as a legal bulwark defending the integrity of Mirrar society.

The Mirrar and other bininj believe that culturally significant sites will be damaged by the construction of the Jabiluka uranium mine. Damage to these spiritual sites not only destroys living tradition from a balanda anthropological viewpoint - the Mirrar believe that damage to these sites will have actual cataclysmic consequences. Descriptions of these consequences should only be explained by particular Traditional Owners and Custodians to particular people at particular times.

The Mirrar believe that their living tradition has sustained an extreme attack as a result of the process by which industrial development has taken place. This attack lies in the refusal by the Australian government to recognise fundamental Mirrar rights to land and the exercise of those rights by the Mirrar. This attack is most clearly manifested in the extinguishment of the Mirrar's right to say "no" to the development of Ranger Uranium Mine under the *Land Rights Act* and the duress applied to the Mirrar to gain their consent

for development at Jabiluka. These issues are explored in more detail later in this submission.

The consequences of this attack has further exacerbated the poor social and economic conditions experienced by the Aboriginal community which in turn are a symptom of the barriers created by the Australian Government to Mirrar exercising their rights and obligations to country.

Mirrar are less likely to go to the area of the Jabiluka Mineral Lease because it is country which has been taken from them and damaged in a way which makes the country dangerous. In this way the mine effectively prevents access to a much wider area than is demarcated by balanda as currently restricted due to the current mine construction activity or which is proposed to be restricted by the Jabiluka mine and milling facilities.

Damage or restricted access to spiritual sites by balanda mining projects contributes to disempowerment and a general pessimism amongst bininj that complete loss of culture is imminent. This historical psychological and sociological impact is one of the key reasons for abandonment of traditional living culture by many bininj and is recognised in symptoms such as alcoholism and other socio-economic indicators of cultural decline.

The Jabiluka uranium mine project will bring many more balanda to the region and entrench the power of balanda organisations and systems in the region. It is the opinion of the Mirrar that balanda cultural, economic and political systems destroy bininj living tradition. Further, the Mirrar believe there is a cumulative impact of the Jabiluka mine proceeding at the same time as the Ranger operations.

This loss of cultural significance extends to all aspects of Mirrar living tradition, including food collection, ceremony, customary law, spiritual connection and socio-political systems.

Contemporary patterns of living tradition include decision making about the management and use of the landscape in accordance with Aboriginal traditions. If Traditional Owners believe that fundamental decisions about management of their land are ignored or violated (e.g. a uranium mine is built on country against their wishes) a sense of hopelessness fosters abandonment of traditional management practices which are integral to living tradition and the World Heritage values of the Kakadu National Park.

Traditional political systems based on the living tradition of bininj have been usurped by balanda political systems and notions of jurisdiction. The Mirrar believe continued presence of mining in the region will ensure the

continuance of this domination. In addition, systems of committees, action groups and other bodies designed by balanda industry and governments to replace traditional political systems have nearly always failed due to exhaustion and/or disinterest resulting from cultural inappropriateness.

The traditional, cultural system of relations between clans in the region is based on co-operation, mutual obligation and respect for traditional owner decision-making. The development of the Jabiluka uranium mine, and associated promises of financial benefit for people other than the traditional owners, has created social fragmentation which is destroying traditional methods for maintaining harmony and equality.

So important is the issue of bininj control over country and so dire is the position of the Mirrar living tradition that the Senior Traditional Owner of the Mirrar, Yvonne Margarula, has indicated that she has no choice but to enter into self-imposed exile from her country if the Jabiluka uranium mine proceeds and her clan's authority is usurped by Government and ERA. The Senior Traditional Owner is the main repository of knowledge which allows for Mirrar living tradition to continue and exercise jurisdictional power. Ms Margarula's exile from country could deliver a fatal blow to the survival of Mirrar culture.

The Jabiluka uranium mine project cannot be viewed in isolation from other social impacts on bininj in the region - including the cumulative impact of the Ranger uranium mine. The Mirrar do not argue that mining alone is impacting on living tradition - the Mirrar argue that mining and its associated social, economic and political impacts are the single greatest impact and that an additional mine will push bininj culture past the point of cultural exhaustion to genocidal decay.

FACT TWO

The living tradition of Mirrar and other bininj is in a state of crisis and this crisis has been worsening since mining commenced on Mirrar country.

The Mirrar and other bininj know that bininj society is in trouble. Some bininj already believe that the living traditions practiced in Kakadu National Park will all but disappear in their lifetimes. Other bininj, especially Senior Traditional Owners, are continuously seeking ways to stop what bininj believe to be the greatest ever danger to their living tradition.

The few hundred local bininj in the Alligator Rivers region are battling on many fronts to maintain their living tradition.

The Mirrar and other bininj are trying to keep the Gundjehmi language alive.

The Mirrar and other bininj are working to keep ceremonial practices in place.

The Mirrar and other bininj are seeking to practice customary law - to make bininj law equal with balanda law. The Mirrar and other bininj are seeking to defend bininj social and political institutions in order to determine solutions to a range of issues.

The Mirrar and other bininj continue to hunt and gather in the traditional manner - to look after country - and seek to pass this knowledge onto their children.

However the Mirrar and other bininj recognise that the practice of living tradition is declining at a disturbing rate. There are many social problems associated with a decline in living tradition - including alcoholism, community violence, chronic health problems, disinterest in education, structural poverty and collective despair and hopelessness. These social, economic and political problems impose further constraints on Mirrar and other bininj exercising their living tradition and have served to create a dangerous cycle of cultural decline.

The Mirrar and other bininj have been identifying the dangers to living tradition since first contact with balanda. The Mirrar believe that nearly all these dangers to living tradition are products of the failure of the balanda world to recognise bininj law and jurisdiction. They include government practices such as stealing children and ignoring established political systems; church practices such as preventing the observance of traditional religions

and customary law; and individual actions such as rape, murder and enslavement.

However in recent times the Mirrar and other bininj have identified one particular balanda activity as the primary source of danger to living tradition in Kakadu - mining.

Mirrar know that balanda sociologists and other academics have consistently avoided blaming mining for the current grave dangers to living tradition. Mirrar know that these balanda academics have said that it is too hard to conclusively say that mining has had an adverse social impact on bininj.

Mirrar regard these findings as symptomatic of the way in which bininj are ignored by balanda systems. Mirrar and other bininj know that mining is the single greatest factor endangering their living tradition. They have continually expressed this viewpoint at every available opportunity.

For example:

am said I
am said I
am finished mining.”

“I mean mining worry me, it wrecks the place - look at Jabiru. I seen it, I said that’s enough...I don’t like it, too much trouble, drunk, drunk, kill, die...I am finished mining.”

Bill Najidji, Bunidj Clan, 1994, Warradjan Cultural Centre Research Notes

was
was
was bulldozer. This is bininj country, we have to stay here forever.”

“Today, too many balanda. Some alright maybe. Whitepella, whitepella, more and more, pushing blackfella out, maybe push him on the rock. It was blackfella country before, you cannot push him out with money, or bulldozer. This is bininj country, we have to stay here forever.”

Jimmy Namadjalawogwog, Worgol Clan, 1994, Warradjan Cultural Centre Research Notes

they
they bugged up country. I am very sorry for that country. I have been here a long time, I am not very happy about it.”

“My sister’s daughter, Yvonne she doesn’t like anymore mining to start, they bugged up country. I am very sorry for that country. I have been here a long time, I am not very happy about it.”

Name Withheld for Cultural Reasons, 1994, Warradjan Cultural Centre Research Notes

if
if
if Associations, but

“If we allow it to happen, Jabiru will be a bigger town...if we don’t fight it will get bigger and bigger...some people are just waiting for that to happen, others are fighting against it. I am against it too. The old people who are said to have signed the Agreement have gone. We have different ideas. I agree with Yvonne [Margarula] that we should look if there is any way to change that Agreement. Mining helped our Associations, but before mining people got on better, they ate more bush

tucker and hunted more instead of going to Social Club to drink. When I was young, I went with my family to ceremony...Nowadays it doesn't happen. They are forgetting who they are. They are losing their culture..."

Jonathon Nadji, Bunidj Clan, 1994, Warradjan Cultural Centre Research Notes

"We have many concerns about mining in our country... A new mine will make our future worthless and destroy more of our country. We oppose any further mining development in our country."

Yvonne Margarula, Mirrar Clan & Jacob Nayinggul, Manilagarr Clan, 1996, Gundjehmi Aboriginal Corporation Public Statement

Yet it seems that bininj views on bininj society are ignored by balanda. It seems that balanda do not hear bininj and invent excuses to absolve mining from prime responsibility for adverse impacts on bininj. It seems that balanda think they know more about bininj than bininj know about themselves. Mirrar and other bininj regard this balanda attitude as insulting. Mirrar and other bininj have now formed the view that it does not matter what bininj say to balanda - these "consultations" will only eventuate in balanda doing what they want to do anyway. This is recognised as the most common way balanda impose an external agenda which erodes living tradition. The problems with these consultations results not only from the outcome of these discussions but by the processes employed when these discussions take place.

So when Mirrar say that mining will destroy their living tradition, balanda governments and mining companies conduct a study which says that bininj are wrong. Some Mirrar and bininj think that the World Heritage Committee will probably ignore bininj in the same way. Other Mirrar and bininj hope that non-Australian balanda on the World Heritage Committee will view things differently than Australian balanda have done in the past.

The Mirrar know that many balanda studies have been conducted about bininj and the Alligator Rivers Region. Mirrar know that many balanda have admitted that since the coming of outsiders to the region, bininj culture has suffered significant impact, exacerbated by a failure or unwillingness by European settlers to respect bininj culture and ownership of the land.

Balanda archaeologists have found evidence that bininj have been living in the East Alligator region for at least 60 000 years, enjoying a complex hunter-gatherer culture with close ties to the land. Bininj know that they have been on their country since it was created.

The Mirrar remember that balanda came to the region last century for various reasons: failed attempts to establish European settlements on the Coburg

Peninsula in the 1820s - 1840s, the hunting of buffalo (an introduced species) from the 1880s, and the establishment of a mission at Oenpelli in 1925.

However, the greatest influx of balanda to the region has stemmed from uranium mining and associated development in the region which has occurred very rapidly over the past twenty years.

Although hundreds of reports have been prepared on the Kakadu region since mining commenced, most of these have been written from a non-human environmental perspective. Analysis of social impacts has been characterised by a lack of willingness to allow bininj to devise their own processes for determining social impacts and a consequent failure to consult accurately to determine bininj views and solutions. The situation has been complicated by the number of players involved in the region, each with their own institution's often conflicting agendas.

As a result bininj have become wholly sceptical about balanda social impact processes designed to help bininj. The first of the major studies into social impacts was established to provide information to the Federal Government on whether the Ranger uranium mine should be allowed to proceed. Its findings (that mining would have negative social impacts) and recommendations (that mining should go ahead anyway) was to set the tone of most future balanda studies about bininj in the Kakadu region.

2.1. The Ranger Uranium Environmental Inquiry

The Ranger Uranium Environmental Inquiry (the Fox Inquiry) was established in 1975 to inquire into environmental aspects of the development of uranium deposits in the Northern Territory of Australia. Its role was to determine whether commercial uranium mining should be permitted in the region. 'Environment' was given a broad reading, and included social considerations.

During its course, the Fox Inquiry produced two reports: the *First Report* delivered on 28 October 1976, and the *Second Report* delivered on 17 May 1977.

After consultation with many of the parties involved, the Inquiry ultimately delivered a highly cautious verdict that uranium mining should be permitted to proceed:

The hazards of mining and milling uranium, if those activities are properly regulated and controlled, are not such as to justify a decision not to develop Australian uranium mines. (First Report, p 185)

This verdict was reached on the basis of *environmental*, not social and jurisdictional, considerations, and it was acknowledged to be against the wishes of the Mirrar and other bininj of the region:

Aboriginal attitude

The evidence before us shows that the traditional owners of the Ranger site and the Northern Land Council (as now constituted) are opposed to the mining of uranium on that site. The Northern Land Council, as constituted before the land rights legislation was passed, had expressed the same view to us. The reasons for the opposition... would extend to any uranium mining in the Region. Some Aboriginals had at an earlier stage approved, or at least not disapproved, the proposed development, but it seems likely that they were not then as fully informed about it as they later become. Traditional consultations had not then taken place, and there was a general conviction that opposition was futile. The Aboriginals do not have confidence that their own view will prevail; they feel that uranium mining development is almost certain to take place at Jabiru, if not elsewhere in the Region as well. They feel that having got so far, the white man is not likely to stop. They have a justifiable complaint that plans for mining have been allowed to develop as far as they have without the Aboriginal people having an adequate opportunity to be heard. Having in mind, in particular, the importance to the Aboriginal people of their right of self-determination, it is not in the circumstances possible for us to say that the development would be beneficial to them...

There can be no compromise with the Aboriginal position; either it is treated as conclusive, or it is set aside... In the end, we form the conclusion that their opposition should not be allowed to prevail.

(Second Report, p 9)

This approval was made subject to many qualifications intended to protect Mirrar and other bininj from the adverse consequences of uranium development. These qualifications have since been largely by-passed or ignored by both developers and Government, and are considered below.

During its course, the Fox Inquiry took note of the status of bininj, and provides a snapshot of how balanda viewed the East Alligator region soon before mining began. The region had already suffered impacts from outsiders prior to the report, most notably by buffalo hunting from the 1880s, the mission established at Oenpelli in 1925, and the Border Store which had been licensed to sell alcohol since 1969.

The portrait painted by the Inquiry is of a disrupted society struggling to come to terms with the effects of balanda interference, the consequences of devastation caused by introduced diseases, and the sudden availability of alcohol. Despite this, bininj culture was found to be resisting the changes, through maintenance of customs and traditional institutions, the gradual re-establishment of smaller, more traditional communities, and opposition to activities such as uranium mining and the sale of alcohol at the Border Store. The Second Report concludes its chapter on Aborigines thus:

The Aboriginals of the Region are a depressed group whose standards of living are far below those acceptable to the wider Australian society. They are a community whose lives have been, and are still being, disrupted by the intrusions of an alien people. They feel the pressures of the white man's activities in relation to their land. In the face of mining exploration, and the threat of much further development, they feel helpless and lost. Their culture and their traditional social organisation do not enable them to cope with the many problems and questions to which this development gives rise. They feel harassed by all the people who have descended upon them in recent times in connection with mining proposals. Their custom is to arrive at important decisions after long deliberation among themselves, sometimes over a period of months or even years. In relation to matters outside tribal tradition, they have not delegated authority to make decisions to any one or more persons. They do not consider the proposed developments as being advantageous to them, as their concerns and values are different from those held by the white man. Their position is perhaps best described in the following words of an Aboriginal leader, Mr Silas Roberts, who was chairman of the Northern Land Council before the Aboriginal Land Rights Act was proclaimed and who is now chairman of the Council of the same name constituted under the Act:

It is true that the people who are belonging to a particular area are really part of that area and if that area is destroyed they are also destroyed. In my travels throughout Australia, I have met many Aborigines from other parts who have lost their culture. They have always lost their land and by losing their land they have lost part of themselves. By way of example, they are like Christians who have lost their soul and don't know where they are—just wandering. We in the Northern Territory seem to be the only ones who have kept our culture.

We are worried that we are losing a little bit, a little bit, all of the time. We keep our ceremony, our culture, but we are always worried. We still perform our ceremonies.

We are very worried that the results of this Inquiry will open the doors to other companies who also want to dig up uranium on our sacred land. There are so many I find it hard to remember them all...we think if they all get in there and start digging we'll be pushed into the sea. We want a fair go to develop. We are human beings, we want to live properly and grow strong.

We see white men as always pushing. We know white men think differently from us, and they are not all bad. But even this Commission is pushing in its own way. I must explain this because it is very important that our difficulty in this is understood. The trouble is that Aborigines did not run their business the same as the white men. We did not and do not reach decisions in the same way. Our people are not as free to make decisions and give evidence as white men seem to be. If you add to this that most Aborigines are very frightened of white people and you will have a lot of trouble getting them to come back to give evidence more than once. These problems are always faced by our field officers. Let me explain a little bit more. We have got to make decisions in respect to land our own way.

It is a long hard road...sometimes a person or group will say 'yes' then talk a little bit more and then say 'no'. Then more talk might take place after a few months and still no final answer. Then all the people who really belong to that country will go over it all again until everyone is sure of his answer and then the answer is given. That may be years after the first talks if the question is a hard one. (Second Report, pp 46-47)

Additionally, it was submitted to the Ranger Uranium Environmental Inquiry by the Council of Aboriginal Affairs that there be no development of the uranium deposits for twenty years, to allow bininj time to be able to withstand the inevitable impacts.¹

It may seem surprising that, in spite of appreciating the depth of bininj opposition to development on their land, and the likely negative consequence of such development, that the Commission was able to approve the mining development. However, the development was to proceed in accordance with five major factors designed to protect bininj interests:

1. the establishment of the Northern Land Council to represent Aboriginal interests;
2. protection and buffering by establishment of Kakadu National Park;
3. limitations imposed upon the mining township of Jabiru, to limit the presence of non-Aboriginals to those strictly necessary to mining projects;
4. the granting of land rights under the *Aboriginal Land Rights (Northern Territory) Act 1976*, and the 'Woodward' principle, '*that the clear wishes of Aborigines on any matter related to the land should not be over-ruled without reference to some independent authority*'. (Aboriginal Land Rights Commission *Second Report* para 515(d), p 94) and;
5. the expectation of *sequential* development, providing the opportunity to evaluate mining effects and to modify the operation or to withhold approval from subsequent projects.

The commissioners apparently believed that by attaching these conditions intended to isolate the mining development and protect bininj interests that bininj culture would not be unduly affected. These beliefs have now proven to be unfortunately optimistic and the measures tragically ineffective to prevent continuing erosion of extant bininj culture. One key

¹ Council for Aboriginal Affairs *Submission to the Ranger Uranium Environmental Inquiry* Transcript of Proceedings, Sydney, 5 June 1976, p 11250.

recommendation, that development should be sequential, has been completely disregarded by the Australian Government. The Commonwealth's poor understanding of the interdependence of these recommendations has been demonstrated by the decision to proceed with the proposed Jabiluka mine.

The Mirrar believe that the process by which the Ranger and Jabiluka agreements were procured, and the subsequent development of Ranger Uranium Mine (and now construction of the Jabiluka uranium mine), forms a tragic case study of how bininj interests can on one hand be *seen* to be protected, but on the other hand sacrificed for commercial convenience.

It is often claimed that bininj voluntarily agreed to mining, in return for the benefits of mining royalties. This is far from the truth: it is well recognised that bininj have always been opposed to uranium mining. The Fox Report had this to say on the matter:

While royalties and other payments referred to in (b) are not unimportant to the Aboriginal people, they see this aspect as incidental, as a material recognition of their rights... Our impression is that they would happily forgo the lot in exchange for an assurance that mining would not proceed. (Ranger Uranium Environmental Inquiry second report, 269)

The process by which the Ranger and Jabiluka agreements were signed involved an extraordinary degree of coercion and duress. A situation in which bininj believe they have no option but to sign the agreement is hardly a voluntary process.

2.2 The Process of Bininj “Approving” the Ranger Uranium Mine

Under then sub-section 40(1) of the *Aboriginal Land Rights (Northern Territory) Act*, the granting of a mining interest on bininj land required consent by the Northern Land Council on advice of the Traditional Owners. However in 1979, s.40(6) specifically *exempted* the Ranger project from s 40(1), removing the veto right. This left the NLC with the right to negotiate the terms, but without the ability to stop the development proceeding.

Furthermore, if agreement could not be reached between the mining company and the NLC, the Minister for Aboriginal Affairs could appoint an arbitrator under subsection 45(1) of the *Aboriginal Land Rights (Northern Territory) Act*. If the NLC did not agree to the arbitrator's proposed terms and conditions, the Minister could then enter into the agreement on behalf of the Land Council. According to the NLC's chief negotiator Stephen Zorn, several times during the negotiations the Government threatened to invoke that subsection.

Although the NLC was required to act at the instruction of the traditional owners, it is now clear that the NLC directed much of its energies towards

encouraging the traditional owners to acquiesce. It seems that the NLC did not believe that the uranium mine could be stopped, and rather than follow the wishes of the traditional owners in opposing the mine, it sought to secure their approval on what the NLC perceived to be favourable terms. Thus, even the body that was instituted and required to represent the traditional owners' wishes instead acted out of self interest.

The Mirrar can only speculate that the reasons for the NLC's actions were twofold. Firstly, the NLC was to receive a substantial share (40%) of the mining royalties. Secondly, as a body the NLC was set up by, and closely tied to, balanda government. As a quasi-government institution, it had much to lose by failing to cooperate with the government. At a meeting at Red Lily Lagoon in Arnhem Land, the NLC chairperson Galarrwuy Yunipingu was quoted as follows:

If we don't sign the agreement, [Prime Minister] Mr Fraser has told me he has power to block the Aboriginal Land Rights Act, and that he will stop the funds to the outstations.

If the Land Council makes a mistake on this question the whole of Australia will know and many people will support those who want to see Aboriginals without land, without any right to make their own decisions, and without a Land Council to represent them.²

Ultimately the Northern Land Council took legal action against the Commonwealth in relation to the duress applied during subsequent negotiation of the Ranger Agreement.

2.3 The Process of Bininj “Approving” the Jabiluka Uranium Mine

The process employed by mining interests and government to achieve the Ranger agreement set a precedent for the mining company Pancontinental to follow when seeking approval for the Jabiluka uranium mine in 1981.

Against a backdrop of deceit, distortions and outright lies the traditional owners were finally compelled to sign the mining agreement on the mistaken belief that, just like at Ranger, they would be denied gaining balanda recognition of their traditional ownership under the *Land Rights Act* unless they approved the Jabiluka mine.

Although the Jabiluka lease did not have the Ranger exemption from veto under s 40(6), Pancontinental was able to skilfully employ confusion and double-standards arising from the Ranger negotiations to compel the traditional owners to “agree” to the Jabiluka mine proceeding.

² Quoted in Carrol P 1978, *Uranium mining: the Oenpelli viewpoint*, Nungalingya Occasional Bulletin No 1, Nungalingya College, Darwin.

The story of how the Mirrar and other bininj were unconscionably forced into signing the Jabiluka agreement is set out in a document prepared by the Gundjehmi Aboriginal Corporation called: *We are not talking about mining: The history of duress and the Jabiluka Project*. We urge members of the UNESCO mission to read this document in full to gain an understanding of why Mirrar feel that the existing Jabiluka agreement is not legitimate.

2.3 See No Evil, Hear No Evil - Balanda Ignoring Balanda

Mirrar and other bininj know that some balanda were telling the government that their approach was bound to have a severe impact on bininj living tradition in the Kakadu region. Unfortunately these balanda were largely ignored in the same way as bininj. One of these balanda, who knew bininj well, was a man called H.C. “Nugget” Coombs. In his article *Impact of Uranium Mining on the Social Environment of the Aborigines in the Alligator Rivers Region*,³ Coombs delivered a scathing report on the abuse of process that followed the Fox Inquiry, clearly perpetrated at the expense of bininj interests.

One of Coombs’ major criticisms was the Government’s rejection of the ‘sequential’ approach to development. The current manifestation of this is that the traditional owners are now bound by a Jabiluka agreement that is sixteen years old, which is contrary to their manifest wishes and represents a substantially different mining proposal. The determination of Mirrar and other bininj to stop Jabiluka is built upon the experiences derived from ERA’s Ranger mine, and is clearly based on a more informed position than before mining commenced, when the original agreement was procured under highly dubious circumstances.

Coombs outlines the background to the signing of mining agreements by the NLC, and concludes:

The Government and the mining company have therefore signatures as required by the *Land Rights Act* to validate an agreement. But whether it was agreement freely entered into by the Aboriginal parties, an agreement to which they feel honourably committed, is quite another matter...

These developments follow with the inevitability of Greek tragedy from the original refusal to allow Aboriginal groups the time to make decisions by their own processes and in their own time. That refusal probably reflected an expectation that the decisions would run counter to the Government’s wishes and a conviction that the growing sense of futility

³ The Impact of Uranium Mining on the Social Environment of Aborigines in the Alligator Rivers Region, 1980, (In Harris, *Social and Environmental Choice – The Impact of Uranium Mining in the Northern Territory*), CRES Monograph 3, CRES, ANU, Canberra, 122-135.

which Aborigines feel about the processes of consultation between the Government and themselves will lead Aborigines to acquiesce in whatever happens. (p.127)

Coombs then gives a scathing critique of the handling of the distribution of royalties.

In fact money is being distributed to individuals in ways which seem almost calculated to provoke mistrust and dissension among Aborigines...

It is difficult to avoid the suspicion that Government parsimony in this matter is motivated by the desire to make the Northern Land Council dependent on mining royalties and so more concerned to reach agreements whatever the views of the communities it represents. (p.128)

And concludes:

This the central component of the Woodward-Fox scenario within which Aboriginal interests and welfare were to be protected from damage to their society and way of life has proven seriously defective. The blame for this lies firmly on the Government. I believe it has ignored the need to allow Aboriginal traditional decision-making processes to be followed. It has exerted pressure for decisions to be reached within times which made the use of these processes impossible and on the nature of the decisions themselves. (p.129)

Coombs then discusses the establishment of the Kakadu National Park as the 'second major constituent of the Woodward-Fox scenario', which he describes as initially 'encouraging' but later 'there has been a hiatus'.

There are strong criticisms of the processes surrounding the township:

Its planning goes on behind closed doors. Aborigines in the region have no knowledge of the physical or social principles on which it is to be constructed or by which it will be managed. Existing white towns in Aboriginal territory present a frightening record of failure to meet Aboriginal needs, of blatant prejudice and insensitivity, of ignorance about and hostility towards Aboriginal society... At present those Aborigines and others who are concerned that those needs and aspirations should reasonably be met, are unable to make any contribution. They are faced only by questions. (p.130)

He then describes elements of the Fox inquiry and the Land Rights Act which...

... I consider to indicate that both the Parliament and the Ranger Inquiry intended that subject only to the National Interest clause, Aboriginal wishes in matters affecting the land should be paramount. An external observer cannot escape the impression that, increasingly day by day, that principle is honoured more in the breach than the observance. Where Aboriginal wishes conflict with the interests of mining companies, white

property owners, or the convenience of bureaucrats the original intention appears to be whittled away till the principle has become little more than an advertising slogan bearing little relation to the quality of the product... (p.131)

There is little or nothing in what is happening in relation to mining, to the Park or to the township which gives real recognition to the fact of Aboriginal ownership. The taint of paternalism is apparent everywhere. (p.131)

Although the Coombs' report was written before the signing of the Jabiluka "agreement" (it was published in 1980), it does provide a clear indication of the way obvious and identified dangers to bininj living tradition have been wilfully ignored by government and industry as mining has proceeded in the region.

2.4 Aborigines and Uranium: the Report on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory

This was another balanda-controlled project undertaken by the Australian Institute of Aboriginal Affairs which sought to monitor the social impact of uranium mining on bininj communities in the Alligator Rivers region over a five-year period from 1978 to 1984. Its final report was published as *Aborigines and Uranium – Consolidated Report to the Minister for Aboriginal Affairs on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory* (Australian Government Publishing Service, Canberra 1984).

The project comprised four major aspects: the collection of baseline data prior to the commencement of mining; an examination of *input* factors, such as royalty monies and employment in the mining industry; examination of issues arising from mining, such as the creation of Kakadu National Park and Jabiru; and field work recording bininj attitudes.

Although quite different in structure, the project was apparently designed as a follow-up to the Fox Inquiry, and contains a lengthy critique of its outlook and process.

The report makes a highly significant point that apparently eluded the commissioners: that it would be *bininj-bininj relations*, not bininj-balanda relations, that stood to be affected the most, and lose the most, by the imposition of mining. By failing to appreciate this highly sensitive point the Fox Inquiry makes a critical error, as the measures it recommends to protect bininj culture simply do not take this into account. Difficulties associated with representation and decision making processes were glossed over or altogether overlooked.

The AIAS report is critical of the Fox Report's unfortunately Anglocentric assessment of bininj culture: "There is more than an element of wowsersism and the 'Protestant Ethic' in the Commission's findings." (p 83). The Fox Report's suggested solutions similarly seem to miss the point:

What was the Commissioners' way out? They put it all down to lack of morale, a lack of self-esteem, and suggest, by way of solution, a range of good works: better houses, more job opportunities, better health and education services; control over alcohol – preferably its total prohibition; and the granting of land. How these would work remains quite mysterious. The Commissioners describe but do not explain their strategy.

The local Aboriginal people always appear at a distance. Their own views are **nowhere** reported. They present no evidence. They continually require interpretation or external commentary. They are problems, not participants. And they are not to be assigned an active **role**. The administrative arrangements are left to outsiders: specialists. The local people may participate as workers, but not as decision-makers, or as the makers or imposers of sanctions. They are not to have a determining voice. Their voices may be heard, but not heeded: they are nowhere decisive. Their interests are to be represented by a distant, European structured organisation: the Northern Land Council... The Director of the Australian National Parks and Wildlife Service and the Supervising Scientist were also put in caretaker roles: one would control the tourists and the town residents, the other the mines; and both would care for the environment. How this could be reconciled with granting of land ownership, and the fact of Aboriginal responsibilities to land, is not explained. (pp 84-85).

The study also pointed out how balanda attempts to impose decision making structures on bininj - to "include" bininj in the conduct of systems and operations which they never wanted in the first place - were failing. The study confirmed what was obvious to Mirrar and other bininj from the outset, that bininj have largely been left behind and excluded from exercising jurisdictional rights, without an effective understanding of, or role in, the decision making process:

What can be said here is that Aboriginal people are not centrally involved in the legal and administrative machinery which has been imposed on the Region, and have not become effective members of the special committees established to deal with social and other problems as they arise. There are no real indicators either that Aboriginal people are developing the skills to be able to participate in a more meaningful fashion; consequently it is not surprising that there is little Aboriginal interest in committee or administrative work. (p.130)

The appalling lack of attention to social considerations were noted in the report, which can be put into sharp contrast with measures taken to protect the physical environment. Why the social environment should be so wantonly disregarded can only be put down to genuine lack of concern for the living bininj culture.

There **are** provisions within the legislation to bring the mining to an immediate halt if monitoring of the physical environment shows that contaminants are being released, or if procedures are not being carried out in accordance with the

various schedules. However, it is significant that regardless of what form monitoring of the social environment took, and the findings such monitoring might arrive at, there are no formal mechanisms to bring the mining to a halt on social environmental grounds. (p 285)

Despite the distinction made between the physical and social impacts in terms of protection, clearly social harms are equally undesirable. Ironically, it is essentially for social reasons that the environment is protected :

There is a reversibility built into present legislation such that if something improper occurs – a release of contaminants into Magela Creek, for example, or some other breach of regulations – the mining or milling can be instantly brought to a halt. However, if it could be proved that few males are likely to survive beyond the age of 35, could the mining be stopped on those grounds? Certainly there are no procedures set down to cover such situations. In any case it could be expected that there would be a rash of arguments to prove that this state of affairs had to do with excessive consumption of alcohol, and/or motor vehicle accidents – and not to do with mining. Aboriginal attempts at explanation would resist such global or total accounts: the tendency would be to give particularistic explanations treating each case one by one. However, what if these explanations, taken as an assemblage, attributed each of the deaths to a human activity related to mining: the digging of this or that hole, the bulldozing of this or that tree, etc? Would grounds then be available for bringing the mining to a halt? (pp 287-288)

The destruction of what balanda consider intangibles may provoke a profoundly different response from bininj. This, like all harm done to the living tradition for which Kakadu has been inscribed as a World Heritage Area has barely been considered by either governments or mining companies.

The report recognises that the rate of change required of bininj has been too great, that what is needed is respite from unrelenting pressure that has been applied since uranium was found.

Aboriginal people in the Region need a breathing space, a chance to come to grips with the various issues and challenges which now confront them. It is doubtful whether they – or their advisers – can confront them unaided. (p 290)

In 1979 this Project recommended a moratorium on new mining developments in the Region. Aborigines, it was said, needed respite and a breathing space. In the present fragile circumstances, the Project concludes that new developments would exacerbate the serious problems besetting the Aboriginal communities. The Project is mindful of plans to expand Park activities and to increase tourism: these will create sufficient strains for the moment without the addition of new pressures. (p 302)

The Project's judgement is that any new developments at this stage will be deleterious. If new developments — mining or tourism — are to occur, several prerequisites are suggested. Firstly, the national task force must be in operation, with guidelines prepared for the mitigation and amelioration of adverse social impacts. Secondly, any such development should be the subject of a new and thorough environmental impact statement (EIS); and if the level of adverse response warrants it, a public inquiry. Both the EIS and the public inquiry procedures should take account of the aims of the task force and of the materials

produced by this Project. With respect to the existing Australian EIS system, Government might consider the Canadian procedure by which both the developer and the Indian community produce their respective draft EIS, leading to a round-table bargaining before a senior arbitrator as to the contents of the final EIS to be approved by Government. In this way Aborigines could become participants in, rather than merely recipients or critics of, the developer's plans. (p 304)

In the report's conclusions, it was recognised that mining had *not* been beneficial to bininj employment, nor has it alleviated poverty or stopped the 'internal decline' generally. Furthermore, the report acknowledged that mining *was* responsible for generation of 'fringe-dwelling' communities, of impacting upon traditional culture by disturbing sacred sites and associated ceremonies, of instilling a greed for money, and of impacting upon bininj civic culture.

In the conclusion, some of the sharpest findings of the state of bininj living culture is revealed:

(ix) The Social Impact of Mining on the Aboriginal Civic Culture

Aborigines in the Region are in a state of transition between a system of imposed wardship and an assertion of independence, one encouraged by the Government. But the current civic culture is one in which disunity, neurosis, a sense of struggle, drinking, stress, hostility, of being drowned by new laws, agencies, and agendas are major manifestations. Their defeat on initial opposition to mining, negotiations leading to Ranger and Nabarlek, the fresh negotiations on Jabiluka and Koongarra, new sources of money, the influx of vehicles, together have led the Project to an unhappy verdict **THAT THIS IS A SOCIETY IN CRISIS**. (p. 299, emphasis transcribed).

And a society in crisis it remains. The living tradition of the Mirrar is ancient beyond imagination yet fragile in the face of sudden change. This is why Mirrar and other bininj believe that the last thing which is needed in the region is another uranium mine. In spite of the Mirrar mounting a domestic and international campaign, lobbying governments and making representations to many institutions - they are still left waiting for someone to listen.

The report concludes with a set of recommendations, which if implemented could have been of great assistance. *Not even one* of these recommendations were ever implemented as suggested.

4. Summary of Recommendations

1. Given the findings of this Project and the demonstrated fragility of the community at this point, any new mining or other major development in the Region, including tourism, in the present circumstances and under prevailing conditions will seriously intensify the grave problems already being faced by people in the Aboriginal domain.

2. There should be a commitment by Government to sensitive intervention, and to planned procedures to assist the Aboriginal community's survival, growth, and flourishing.
3. Immediate steps should be taken to create a professionally competent national task force to help Aborigines acquire the necessary skills and techniques for their survival alongside prolonged uranium mining and/or development in the Region. The aims of this task force should be:
 - (a) To create a partnership through which Aborigines come to know about, understand, and use the precepts and tools inherent in the activities and processes that impinge on their present and future lives: such as the elements of western law, of politics (local, national and international), economics, industrial development, entrepreneurship, science, technology, and western notions of conservation.
 - (b) To create, through that partnership, a governmental knowledge, understanding, and use of precepts and tools inherent in the Aboriginal world: such as their scale and ordering of social relationships, their political, economic, communication, and decision-making processes, their system of science and technology, and their perception of their living landscape.
4. Any further mining or development should not take place before this task force is created and has developed guidelines and procedures which effectively attempt to mitigate the deleterious effects of mining and development on Aborigines in the Region, and reinforces the positive aspects of development.
5. Any proposal for new uranium mining or other major development within the next ten years should be the subject of a new, full environmental impact statement and, if necessary, a subsequent public inquiry which, taking into account the findings of this Project and the work of the task force, fully assesses the social impact of such further development and recommends accordingly.
6. There should be continued monitoring of the social impact of uranium mining in this Region, in co-operation with the task force and with a stronger formal link with the Office of the Supervising Scientist.
7. There should be consideration of a revised procedure by which Aborigines may, by law, commission their own environmental impact statement as a counter to that produced by the developer, leading to an arbitration between competing or conflicting aims, clauses, and claims (as in Canada).
8. There must be an immediate program of education for Aborigines about uranium: its uses, abuses, values, hazards, and safeguards. (pp 305 - 306).

Aborigines and Uranium has been to date the most significant and detailed assessment of the impact of mining on the living culture. It identified many deficiencies in the Fox Report and its implementation - those deficiencies were not rectified. It made a set of recommendations - the recommendations were ignored.

Accordingly it can be seen that what Mirrar and other bininj have been saying all along about the serious dangers to living tradition have been identified by balanda academics themselves but then ignored by balanda politicians and other decision makers. Promises are made and systematically broken. And

with every broken promise Mirrar and other bininj fall deeper into a sense of hopelessness, justifiably believing that no matter how forceful the evidence is that mining is killing their people and country, balanda will continue pushing and pushing until all bininj living tradition is dead.

Further the continuous examination of these issues will never serve to resolve them when agendas are imposed by balanda. The processes simply frustrate bininj and continue to act as an impediment to exercising the jurisdictional rights inherent in bininj living tradition.

2.5 The Kakadu Region Social Impact Study - 1996/7

Between 1984 and 1996, there was no comprehensive effort to examine the plight of living tradition in the Kakadu region. The Ranger mine had continued to impact on bininj in the extremely harmful way identified by both balanda reports and continuing bininj experience.

Over a similar period, between 1983 and 1996, the Australian Labor Party held control of the Federal Government and had prevented expansion of the uranium mining industry in a manner which precluded the establishment of the Jabiluka uranium mine. However in 1996, a conservative Coalition government was elected to power and immediately changed Federal policy in order to allow the full-scale expansion of uranium mining in Australia.

By this stage the Jabiluka Mineral Lease had been bought by the owner of the Ranger Mineral Lease, Energy Resources of Australia Ltd. It quickly sought approval from the Federal Government for the Jabiluka agreement, now 16 years old, to be enforced and implemented.

However, the political power brokers in the region were under intense public pressure (largely generated by the Mirrar) to address the fact that adverse social impacts in the region had been systematically ignored for more than a decade. Consequently the Federal Government, the Northern Territory Government, ERA and the Northern Land Council agreed that another social impact study should be conducted in the region. The fundamentally flawed and entirely inappropriate study which eventually took place was called the Kakadu Region Social Impact Study (KRSIS).

The Mirrar and other bininj realised soon after the KRSIS process began that the study would be another balanda exercise in identifying problems which bininj knew existed, making a set of recommendations which systematically ignored their views and then proceeding with what the balanda wanted to do anyway - which in this case was to proceed with construction of Jabiluka uranium mine. Yet again, bininj cynicism about the social impact assessment process was confirmed.

While the parties which funded the KRSIS place much weight in its relevance and importance, the Mirrar reject the study as ignorant of central concerns of Mirrar and other bininj. In particular it is vital to note that the study, quite astonishingly, excluded examination of the Jabiluka mine and its impact on Mirrar and other bininj. This is confirmed at the outset of the Study's final report:

The one matter that was not specifically part of the study was the question of the Jabiluka mine. This question is of central concern for the traditional owners of the area. These same traditional owners are also the ones who will need to be involved with many of the proposals that concern Jabiru town and its future arrangements. (v-vi, Chairman's Foreword).

Given this fact alone, the Mirrar do not believe that the KRSIS should be given any serious consideration as a mechanism to address the dangers to living tradition and World Heritage values posed by the Jabiluka uranium mine.

In fact the KRSIS was utterly ineffective in coming to any conclusions about mining and its associated impacts despite being conducted in the context of highly public opposition to the Jabiluka uranium mine by the Mirrar and other Traditional Owners. This is demonstrated once more in the KRSIS final report:

The Issue of direct and indirect impacts of development on the Aboriginal population has not been unambiguously answered through KRSIS. At best it can be said that positive impacts of mining and tourism are not clearly established vis-à-vis other impacts; but negative impacts are equally not clear-cut. Much of the evidence from consultancies that were meant to address this issue is vulnerable to variable interpretation. For example, Taylor (1996), using 1991 and 1994 data, showed that the socio-economic status of Aboriginal people in the Region is similar to other parts of the Top End. Crough and Cronin's research (1997) does not clearly establish if, in comparative or absolute terms, the Kakadu Region is over- or under-resourced. There is an oft-stated expectation that with mining there should be improvement in the socio-economic status of Aboriginal people. However, as discussed above, there is no clear-cut evidence in this region of such beneficial outcomes. What has been clearly articulated are the indirect impacts and pressures of living in the Kakadu Region: impacts and pressures that come from living in a World Heritage area and in proximity to uranium mining. For Aboriginal people, these pressures are sometimes felt through loss of privacy, little respect for their proprietary interests, difficult decisions over 'caring for country', and internal friction within the Aboriginal community.

The KRSIS study was funded and controlled by those who stand to benefit from mining in the Kakadu region; was conducted in a ridiculously short timeframe more suited to mining construction timetables than proper social assessment; did not consider the issue of the Jabiluka uranium mine despite this project being the largest single proposed impact in the Region; and failed

to engage local bininj to such an extent that it quickly became viewed by Mirrar as yet another exercise in costly balanda report writing.

The Mirrar belief in the inadequacy of the KRSIS project has been supported by the Aboriginal and Torres Strait Islander Commission (ATSIC), the peak organisation for Aboriginal affairs in Australia:

In their submission to the Jabiluka Environmental Impact Statement process they stated:

ATSIC is concerned that the KRSIS process may not have substantively examined Aboriginal attitudes towards the proposed Jabiluka mine (or other proposed mines). If this is so, it seriously undermines the usefulness of the reports from the KRSIS for the present EIS process and any subsequent developments. ATSIC is aware that many Aboriginal people have questioned the usefulness of the KRSIS and this is in part because they believe the Jabiluka mine will be approved regardless of their views. From their experience in the past twenty years, it is not surprising that so many Aboriginal people in the region do not believe that participating in such processes will further their interests. (p.11)

These major flaws require that the KRSIS be regarded as largely irrelevant for the purposes of the World Heritage Committee's investigation. However it is important to note that nearly eighteen months after the KRSIS recommendations were handed down there has been no implementation of its findings. Only last week was the Chairperson of the KRSIS Implementation Team appointed - without consultation with the Traditional Owners and against their formally expressed wishes that the Chairperson be an Aboriginal person.

KRSIS seems only to have confirmed that the process of exclusion and disempowerment perpetrated by balanda against bininj is just as pervasive today as it was twenty years ago.

2.6. Government Failure to Consider Impacts on Living Tradition in the Approval Process for the Jabiluka Uranium Mine

The main public vehicle in the Government approval process for the proposal to develop the Jabiluka uranium mine was the Draft Environmental Impact Statement prepared by Energy Resources of Australia. Most of the issues relating to the living tradition of the Mirrar were contained in Sections 7.6 and 7.7.

The Mirrar, through the Gundjehmi Aboriginal Corporation, wrote in their submission to the Draft Jabiluka EIS that the traditional owner opposition to the project had not been adequately acknowledged or explored:

In our view ERA is not committed to comprehensive investigation of these issues nor committed to resolution of the serious consequences of such development.

The draft EIS does not reveal any basis for a conclusion that a new mine at Jabiluka would not further attack the social and cultural fabric of the region. It points to the same approaches as have been used in the past and which have resulted in the current position. (9/1/97)

The view of the Gundjehmi Aboriginal Corporation was backed up by the Northern Land Council in their submission to the EIS:

Most importantly, the social impacts upon Aboriginal landowners and others in the Aboriginal community who may be affected by the project have not been adequately discussed. (9/1/97)

The NLC goes on to attack ERA for their manifest failing in the EIS to give any commitments to issues of living tradition and social impact:

ERA clearly reveals its priorities when it states:

“ERA has already advised the NLC that it will undertake to do all within its ability to implement the recommendations of the Community Development Program resulting from the Kakadu Region Aboriginal Impact Study provided they do not materially and detrimentally affect the Company’s net profit value, marketing and production flexibility, environmental requirements and health and safety obligations.”

This is not an undertaking, because it seeks to constrain the KRSIS outcomes to a no net cost result.

A major issue which should be drawn out in this section relates to the assertion of many Aboriginal people that the failure of ERA and the Governments to monitor and address negative impacts arising from the Ranger mine has imposed such a burden on them and their families that they wish to reverse the 1982 decision to allow mining of Jabiluka to proceed.

Yet the NLC saved its most virulent attack on ERA with regard to ERA’s comments in the EIS that:

The belief of the senior traditional owner can be characterised as follows:

- The social dysfunction being suffered by the Aboriginal community is the result of mining development only.
- Further mining would necessarily lead to further social dysfunction.

It is ERA’s view, however, that the social dysfunction predated mining and is the result of all development impacts. Further it is ERAs view that the incremental effect of Jabiluka is marginal. (7-13, Jabiluka Draft EIS)

In response to ERA’s assertions, the NLC comments in their submission:

ERA’s attempt to characterise the senior traditional owner’s beliefs is self-serving and trivialises the depth of the concerns traditional Aboriginal owners have

expressed. Dot point one belittles the senior traditional owner's intelligence. In the NLC's consultations, her assessment of cause has not been limited to mining, however the compounding influence of mining cannot be denied. The second dot point is probably correct. Further opposition to mining and concern over social impacts is not confined to the senior traditional owner alone. These views are extensively held. Clarification of these matters will need to wait until the KRSIS reports and extensive consultation has been undertaken.

Furthermore, ERA's view that "the social dysfunction predated mining and is the result of all development impacts" totally ignores the fact that Aboriginal people were promised by Government and the Fox Inquiry that such impacts would be addressed through the application of resources and programmes during the life of the Ranger Mine. This has not occurred.

The NLC goes on to conclude that:

Aboriginal people in the region have faced profound social, environmental, and economic changes since the Ranger Uranium Environmental Inquiry examined the basis of their land claims and their opposition to uranium mining. There has been constant monitoring of biophysical environmental change in the region. In contrast monitoring of the social and cultural impacts of uranium mining, the consequences of growth in the tourism sector, the development of Kakadu National Park, implementation of World Heritage status, development of a wide range of infrastructure projects and the growth of Jabiru as a regional centre has been far from systematic and rarely aimed at securing equitable and sustainable benefits for Aboriginal groups. With re-activation of the proposal to mine the Jabiluka uranium deposit, the need for Aboriginal people to critically review existing patterns of impact, consider a range of alternative futures, and make decisions about preferred and acceptable options for their region has become urgent.

The potential for further marginalisation of Aboriginal interests is enormous...

The views of the NLC and the Gundjehmi Aboriginal Corporation were echoed by the Kakadu Board of Management. The Board stated in their brief submission:

It is the view of the Kakadu Board that the issue of negative social impacts on Aboriginal people from the development of a new mine at Jabiluka is one of the most significant potential mine impacts which has to be addressed. The Kakadu Board believes that these impacts have not been adequately addressed in the EIS.

The Kakadu Board strongly believes that it would be inappropriate to approve the development of the Jabiluka mine on the basis of the social impact assessment made in the draft Jabiluka EIS... (2/1/97)

The Aboriginal and Torres Strait Islander Commission (ATSIC) was another organisation to make a submission to Government on the Jabiluka EIS. ATSIC was highly critical of the mine proposal, declaring:

“..the involvement of Aboriginal people has been restricted. The result is that the final EIS does not adequately address the concerns expressed by Aboriginal people in the region about the expansion of mining activity...” (p.2)

“...previous Government decisions about this region have reduced the control that traditional owners in the region have been able to exercise over their country and have fostered a sense of powerlessness in the minds of many Aboriginal people..” (p.1)

“...there are very serious unexamined issues in relation to cultural destruction and the implications for the World Heritage values of the Kakadu National Park...” (p.1)

In response to the Jabiluka EIS, Environment Australia (the Federal Government Department which deals with World Heritage issues) conducted an *Environmental Assessment Report* in which it reported the following deficiencies to the Minister for the Environment in relation to ERA’s approach to cultural value issues:

There would appear to be evidence of marginalisation of the Traditional Owners and the broader Aboriginal community as a result of past decisions concerning development and management of the region...(p.109)

...continuation of the large non-Aboriginal population has the potential to prolong Aboriginal marginalisation. (p.110)

The Boyweg site is of particular concern (and) would appear to be a “danger” site which could be compromised if development proceeds (p.112)

...many of the Aboriginal people in the region are concerned over the potential contamination of bush food and medicine (p.113)

...there is a risk of gradual attrition of knowledge of these areas if they become less frequented and children are taken there less often for socialisation into traditional ecological knowledge (p.114)

...mining and its cumulative impacts have the potential to contribute to existing sources of stress, potentially leading to increased alcohol usage (p.117)

...dealing with mining produces stresses and time demands which contribute to overall social impacts (p.118)

...baseline anthropological and archeological studies have not been undertaken for the specific purpose of this project (p.59)

...first hand knowledge of sacred sites has not been available...(p.59)

There remains potential for significant adverse impacts upon World Heritage and National Estate values, especially indigenous values, but an estimate of the magnitude of the risk cannot be made in the absence of adequate baseline data (p.125)

Despite this damning report on the complete inadequacy with which the Jabiluka EIS dealt with cultural heritage issues, including those values relating to World Heritage status, the Minister recommended that the Jabiluka mine be allowed to proceed. To date none of the concerns raised by Environment Australia have been addressed. Environment Australia's view that "there remains potential for significant adverse impacts upon World Heritage...values, especially indigenous values..." (quoted above) is compelling evidence from the Australian Government themselves that World Heritage values are in danger.

Two other documents relating to social and cultural impacts on bininj have been produced by ERA in the context of the Government approval process.

The first of these is the *Public Environment Report* prepared for the Jabiluka Mill Alternative. This document makes only passing reference to issues of living tradition - deferring to the (wholly inadequate) discussions of these issues in the Draft EIS.

The second of these is the *Interim Cultural Heritage Management Plan* for the Jabiluka Mineral Lease which ERA was required to prepare as one of the conditions upon which Commonwealth approval was given to develop the Jabiluka mine. The fact that the Mirrar have not seen this document nor were consulted in anyway during its formulation should be proof alone of its complete inadequacy.

The Mirrar believe that the Australian government is incapable of properly implementing programs which result in the recognition, maintenance and protection of living tradition and cultural values.

It is hoped that the information above has demonstrated that:

- **The living tradition of Mirrar and other bininj is in a state of crisis and**
- **This crisis has been worsening since mining commenced on Mirrar country.**
- **All attempts to alleviate this crisis while mining continues have failed.**

Mirrar and other bininj believe that the social fabric which binds living tradition *cannot* be healed while mining continues to take place. Report after report considers the social impact of mining, realises its negative consequences, then makes a new set of ameliorative recommendations within the context of an ongoing mining operation. It is unclear why the researchers

shun the often expressed viewpoint of bininj (the subjects of their studies) that mining be halted.

Perhaps they believe that mining is impossible to stop, or that somehow their suggestions will succeed where others have failed. Some may even have a vested interest in continuing mining operations; it does not really matter.

The consequences have been a set of compromises between the needs of bininj and the wants of industry. In every case, industry has been able to proceed, paying lip service or outright disregarding the traditional owner's wishes. In this environment, the continuing erosion of bininj living tradition is inevitable.

It is the belief of Mirrar that the cycle of oppression and depression will only be broken when bininj are accorded the authority to speak for *their own country* within and with the support of institutions that are accorded jurisdictional power commensurate with their full rights at bininj and balanda law.

FACT THREE

Dangers to Mirrar Living Tradition Can Only be Eliminated by Recognition and Implementation of the Political Rights Inherent in Bininj Living Tradition

3.1: Findings

The Mirrar believe that any reasonable assessment of Mirrar living tradition leads to the following findings:

1. The Commonwealth government does not adequately understand or has dismissed the nature of living tradition associated with World Heritage cultural values and has not ensured that impacts on cultural values are monitored, evaluated and mitigated;

The Australian Government received detailed information about the cumulative impacts on living tradition in two government inquiries: The Fox Inquiry (1977) and the Social Impact of Uranium Mining Report (1984). It failed to properly implement recommendations in these reports designed to ameliorate negative social impacts of mining, including the need to prevent concurrent mining development in the region and the need to conduct ongoing social impact assessment.

Subsequent to these Inquiries, the Australian government has failed to take account of important social and economic factors impacting on the Aboriginal community in relation to the proposed development of Jabiluka as required under the *Environmental Protection (Impact of Proposals) Act*. This is demonstrated in the Governments acceptance of an Environmental Impact Statement and Public Environment Report in relation to Jabiluka which failed to adequately address issues of living tradition.

The Mirrar were not resourced to provide this information by the Australian government and no independent studies were conducted or initiated by the Australian government to ascertain the likely social impacts at Jabiluka or the views of Aboriginal people on further mining. The Kakadu Region Social Impact Study (KRSIS) specifically resisted examination of the potential impacts of Jabiluka.

The Australian government has not established or proposed a method by which cultural values can be safeguarded. The Australian government has not consulted Aboriginal people in relation to the management of cultural values for which Kakadu National Park has received listing. The Australian government has not attempted to make itself aware of the concerns of Traditional Owners in relation to cultural values.

2. The Australian Government has mounted a systematic and sustained attack on the living tradition of the Mirrar and Aboriginal people of Kakadu

Aboriginal people have been systematically dispossessed of political and civil rights across the Australian continent. Associated policies of assimilation have been referred to as cultural genocide by eminent persons such as former Social Justice Commissioner Mick Dodson and many representative groups of Aboriginal people.

The Australian Government has attempted to gloss over this shameful history via a national process of Reconciliation which Aboriginal people increasingly recognise to be tokenistic and devoid of constructive outcomes. Every Aboriginal community is experiencing the devastation of these continuing policies.

In Kakadu National Park this systematic attack on the political and social structures of Aboriginal people has manifested in the form of massive industrial development associated with uranium mining.

Aboriginal people of the Kakadu region were given no option but to accept that uranium mining would take place on their land. The fundamental right of the Mirrar landholders to say “no” under the *Aboriginal Land Rights (Northern Territory) Act* was legislatively withheld by the Australian Government.

Negotiations at Jabiluka were conducted in an atmosphere of duress. The Mirrar were advised that unless they agreed to the mining of the Jabiluka deposit that the mining company would threaten their claim for title under the *Land Rights Act*. The aim of gaining title to land was of utmost importance to the Mirrar. However it has transpired that achieving title under these circumstances becomes virtually meaningless.

The establishment of the administrative regime of Kakadu institutions - Kakadu National Park, Jabiru Town Council, Environmental Research Institute of the Supervising Scientist and the Northern Land Council - have all had an substantial social and economic impact.

The absence of government funding for housing, health, provision of water and power, roads and sewerage - basic citizenship entitlements for all citizens in Australia - has further exacerbated the symptoms of the damaged social and political systems of the Mirrar and Aboriginal people of Kakadu. The absence of an organisation managed and controlled by the Mirrar which is not in some way influenced by mining activity (by receipt of royalty payments) has also created institutional barriers to the aspirations of Mirrar and Aboriginal peoples independent of a regime designed to support industrial development.

The Kakadu Region Social Impact Study demonstrated further the desire of institutions in the Kakadu region to entrench and reinforce their powerful positions. Recommendations in this study give scant regard to the institutional support available to the Mirrar and other Aboriginal people of Kakadu, fail to recognise cultural values and the negative impacts on living tradition, and again attempt to impose solutions devised in isolation from the Mirrar and the Aboriginal people of Kakadu. The Mirrar believe that the Kakadu Region Social Impact Study recommendations are devised to benefit the present Kakadu regime and further entrench the status quo.

Within the report of the Kakadu Region Social Impact Study there emerged an insulting attempt to paint the Kakadu history as a “social contract”.

This term has been applied and defined by the Australian government and other institutions in the Kakadu region in isolation from the Mirrar and other Aboriginal people of Kakadu.

There is no consent to engage in this contract. It is a sinister representation of non-existent harmony.

The social contract is said to exist between the Aboriginal people of Kakadu and the rest of Australia. Unfortunately the rest of Australia is hardly aware of the existence of the contract and neither are Aboriginal people of the Kakadu region. The Mirrar point to the following inadequacies in the contract which are yet to be fully articulated. Where are the terms of this contract? By what process did the entities agree upon it? Who enforces it? Who is penalised if positive outcomes are not achieved? Where are the indicators to judge it's success? Why were Aboriginal people and especially Mirrar not made aware of it's existence up until the Kakadu Region Social Impact Study?

The Mirrar believe that the term “social contract” creates a false framework which enables development to take place which will sacrifice Mirrar living tradition but which the Australian Government now hopes it can characterise as socially acceptable. The Mirrar believe that this is a negligent excuse for what, with a considered and genuine process, could have achieved outcomes which sustained the Mirrar people and upheld their living tradition.

3. There have been devastating cumulative impacts on the living traditions of the Mirrar and Aboriginal people of Kakadu since the imposition of Ranger Uranium Mine

Aboriginal people believe that the Ranger Uranium Mine has continuously imposed cumulative negative impacts on the cultural values for which Kakadu National Park has been recognised as a World Heritage Area. It is the cumulative effect of Ranger Uranium Mine compounding with the probable impacts of the Jabiluka proposal which the Mirrar believe pose an ascertained and potential threat to cultural values, living tradition and World Heritage status.

Cumulative impacts manifest in symptoms of the cultural decline including poor opportunities for education, health, housing and increased propensity for alcoholism and breakdown in living tradition. The Mirrar believe that until:

- i) remedial strategies, which include an immediate moratorium on mining at Jabiluka and Koongarra, are supported by the Australian government and;
- ii) the Australian Government genuinely understands its obligations under the World Heritage Convention and genuinely commits to addressing these problems

the effect of ongoing cumulative impacts will result in devastation of the Mirrar living tradition and consequent cultural genocide.

4. The Australian Government has:

- (i) failed to resource Aboriginal people adequately and;**
- (ii) failed to recognise Aboriginal jurisdiction**

and as a result Aboriginal people have been prevented from devising strategies which can be implemented by Aboriginal people to manage and protect the unique qualities of living tradition recognised by World Heritage inscription.

The Australian Government has failed to facilitate the creation of a cultural management strategy which is cogniscent of:

- (i) The current social and economic circumstances of the Mirrar and Aboriginal people of Kakadu
- (ii) The requirements to protect and manage cultural heritage in domestic legislation consistent with the World Heritage Convention
- (iii) The financial commitments required to assist Aboriginal people to devise and implement strategies to protect and manage cultural heritage and living culture consistent with domestic legislative policy; especially where this may require the establishment of culturally appropriate institutions to support the Mirrar and other Aboriginal people in such endeavours.

5. The Australian Government cannot demonstrate an ability to protect World Heritage living traditions independent of a development agenda.

There is no evidence that the Australian Government is in any way motivated to assess the threat to, and measures required for ongoing protection and management of, living tradition outside an aggressive industrial agenda. The Australian government refuses to require ERA to undertake a moratorium on any further development until these issues can be resolved (or worked through) and does not seek independent Aboriginal advice. The Mirrar believe that the Australian government supports mining at the expense of their very existence.

6. The Mirrar are reliant on the World Heritage Committee recommending and undertaking the strongest course of action possible to revive, rebuild and protect the unique living traditions recognised by the World Heritage listing of Kakadu National Park.

The Mirrar people do not raise their concerns about cultural devastation with the World Heritage Bureau lightly. Notions of cultural values and living traditions are the processes of life itself for the Mirrar, encompassing their relationship with their country and

their people. Mirrar society experiences a systematic and sustained attack by a dominant western culture on a daily basis.

There is a grave necessity for the dominant western culture to relieve its development agenda and thereby reduce its impact on the Mirrar and Aboriginal people of Kakadu and to provide resources to address the disadvantage suffered by the local Aboriginal community. This is not a new or unknown request to the Australian government and has been raised throughout the course of government initiated research into the negative social impacts in the Kakadu region.

The controversy will not go away while the Mirrar remain. The Mirrar are committed to opposing intrusive development threatening their living tradition. The Mirrar are confident that the World Heritage Committee and its Mission understand the dire position faced by the Mirrar and believe it is incumbent on UNESCO to influence and correct the Australian Government's approach to ensuring Mirrar survival.

7. The Mirrar believe that mining in any form at Jabiluka creates grave dangers to the Mirrar cultural values and living tradition for which Kakadu National Park has received World Heritage listing.

The Mirrar wish to clearly articulate to the World Heritage Committee that they believe both the Ranger and Jabiluka Milling options are culturally devastating and therefore do not view assessing the relative merits of either option as a valid contribution to consideration of World Heritage In Danger Listing or a program of corrective measures.

3.2 Corrective Measures Required

The Mirrar propose the following interdependent corrective measures to protect and conserve cultural values and living tradition are:

That the World Heritage Committee place Kakadu National Park on the List of World Heritage in Danger as a matter of urgency until:

- a) The Australian Government halts mining operations at Jabiluka; rehabilitates the site consistent with the wishes of Traditional Owners and incorporates the Jabiluka mining enclave into Kakadu National Park.

- b) The Australian Government implements legislation which prevents mining in or adjacent to World Heritage listed areas.
- c) Mirrar are funded adequately by the Australian government to devise strategies for the alleviating past erosion of the living traditions for which Kakadu National Park has received World Heritage listing and ensuring ongoing protection and maintenance of World Heritage cultural values by and for the Mirrar and Aboriginal people of Kakadu.
- d) The Australian Government recognises in legislation the method, process, instruments, and organisational support (infrastructure) devised by Mirrar and other Aboriginal people of Kakadu to ensure the ongoing protection and maintenance of World Heritage cultural values by and for the Mirrar and Aboriginal people of Kakadu and mechanisms are established which enable regular reports by Mirrar to be presented to the World Heritage Centre, Bureau and Committee for ongoing scrutiny and these provisions are attached to the Operational Guidelines of the Convention.
- e) The Australian Government provides funds for the establishment and ongoing operations of a Social Impact Monitoring Committee managed and controlled by the Mirrar and other Aboriginal people of Kakadu in order to become better informed of the ongoing impact of the development agenda pursued by the Australian Government
- f) The Australian Government establish a legal mechanism for the expression and enjoyment of native title rights for the Mirrar and Aboriginal People of Kakadu in the interest of protecting the living traditions recognised in the World Heritage Convention.
- g) The Australian Government resource the Mirrar and Aboriginal people of Kakadu to autonomously achieve a standard of living commensurate with the average Australian community independent of industrial development and in a manner which recognises the disadvantage of the Aboriginal people of the Kakadu region and the cumulative negative impacts of the development agenda imposed upon the Mirrar and the Aboriginal people of Kakadu.

And accordingly that the Australian Government recognise that basic services such as electricity, water, sewerage, road establishment and maintenance, culturally-appropriate education, housing, legal and health services are “citizenship entitlements” which should be provided to Aboriginal people of the Kakadu region independent of

development agendas as they are for most non-Aboriginal Australians. Without this pre-requisite there exists a fundamental barrier to Mirrar and other Aboriginal people participating effectively in the management and protection of their living tradition.

i) The Australian Government agrees to properly undertake a process of evaluation and management of *the World Heritage Properties Conservation Act 1983* in cooperation with Mirrar and other Aboriginal people of Kakadu to ensure it's consistency with these recommendations and to take account of the developing nature of the World Heritage Convention and concepts of universal values including living tradition.

FACT FOUR

The Dangers to Mirrar Living Tradition Posed by the Jabiluka Uranium Mine meet the Requirements For Inclusion of Kakadu National Park on the List Of World Heritage In Danger

In accordance with Article 11, Paragraph 4 of the *Convention for the Protection of the World Cultural and Natural Heritage* and Chapter III of the *Operational Guidelines for the Implementation of the World Heritage Convention* the Mirrar submit that the following requirements for inclusion of Kakadu on the List of World Heritage in Danger have been met:

1. The Property Under Consideration is on the World Heritage List

Kakadu National Park is currently inscribed on the World Heritage List under three cultural (ii, iii, iv) and two cultural criteria (i, vi). The Park has been inscribed on the World Heritage List in three stages: Stage 1 in 1981, Stage 2 in 1987 and Stage 3 was added in 1992.

It is probable that Kakadu National Park qualifies under additional and amended cultural criteria introduced since 1992, particularly for its unique and universal qualities as a cultural landscape.

The Mirrar have demonstrated how the living tradition of Mirrar and other bininj forms the basis of cultural criterion (vi) and natural criterion (ii) for which Kakadu has received World Heritage status.

2. The Property is Threatened by Serious and Specific Danger

The Mirrar have demonstrated in this written statement and via oral accounts to the World Heritage Committee investigative mission that their living tradition is seriously and specifically threatened by the development of the Jabiluka uranium mine and a range of associated social, cultural and jurisdictional impacts.

Furthermore the Mirrar have articulated how negative impacts on their living tradition caused by mining activities on the Jabiluka Mineral Lease excision are inseparable from impacts on the living tradition which forms the foundation of cultural values for which the Kakadu National Park has been inscribed as a World Heritage Area.

In this way the cultural values of the Kakadu World Heritage property are threatened by the serious and specific danger of the Jabiluka uranium mine.

3. Major Operations are Necessary for the Conservation of the Property

The Mirrar have demonstrated that a range of major operations are necessary for the conservation of the cultural values for which Kakadu National Park has been inscribed as a World Heritage property.

These operations include not only restoration and rehabilitation of the physical environment damaged by construction activities associated with the Jabiluka uranium mine, but in addition a number of crucial social and jurisdictional changes to the way in which development proceeds on the each and every clan territory included in the Kakadu World Heritage Area.

4A. The property is faced with a 78(i): Ascertained Danger.

The Mirrar have demonstrated, in accordance with the criteria specified in Paragraph 78(i) of the *Operational Guidelines for the Implementation of the World Heritage Convention*, that:

the cultural values of Kakadu National Park, as represented by the living tradition of the Mirrar and other bininj, are “faced with specific and proven imminent danger such as”:

78(i)(f): an important loss of cultural significance

The Mirrar have articulated how the living tradition which forms the central component of cultural significance in the Kakadu World Heritage Area is faced with the specifically identified danger of mining within the boundaries of Kakadu National Park.

The Mirrar believe that both their inherent knowledge and understanding of what effects their living tradition combined with a number of independent studies and social indicators proves that this danger is imminent.

In particular, Mirrar believe that their experiences with the Ranger uranium mine demonstrate that any additional mining on Mirrar country will destroy the Mirrar living tradition and therefore cause an important loss of cultural significance in the Kakadu World Heritage Area.

4B. The property is faced with a 78(ii) Potential Danger.

The Mirrar have demonstrated in accordance with the criteria specified in Paragraph 78(ii) of the *Operational Guidelines for the Implementation of the World Heritage Convention*, that:

the cultural values of Kakadu National Park, as represented by the living tradition of the Mirrar and other bininj, are “faced with threats which could have deleterious effects” on Kakadu’s “inherent characteristics”, such as:

78(ii)(b):lack of conservation policy; and
78(ii)(c): threatening effects of regional planning projects

The Mirrar have shown how their living tradition is threatened by the Jabiluka uranium mine in a manner which will have deleterious effects on Kakadu National Park’s inherent cultural characteristics.

In particular the Mirrar have demonstrated the lack of any credible conservation policy which aims to assist the Mirrar to save their living tradition in the face of rapid social change associated with the commencement and continuation of mining on Mirrar country.

The Mirrar have also demonstrated in significant detail the threatening effects of the Jabiluka uranium mine to Kakadu’s cultural values in the context of the Jabiluka mine’s status as a regional planning project.

5. The factors which are threatening the integrity of the property are amenable to correction by human action.

The central factor which is threatening the integrity of the property is the Jabiluka uranium mine. The mine can be stopped by changes in Government policy at the Commonwealth or Territory level. As an inherently man-made threat to the cultural values of Kakadu National Park the Jabiluka project can be stopped in conjunction with suitable rehabilitation measures.

The Mirrar have also identified a number of jurisdictional, social and economic measures which can be adopted by Government to arrest the considerable damage which has already been inflicted on the living tradition of Mirrar and other bininj.

6. The ascertained danger caused by cultural deterioration is of the highest intensity

With reference to Paragraph 81(b) of the *Operational Guidelines for the Implementation of the World Heritage Convention* the Mirrar submit that the cultural deteriorations to which Kakadu National Park has been subjected by existing mining activities combined with the escalating impact of activities associated with the Jabiluka uranium mine are of the highest intensity.

In fact the Mirrar believe these impacts to be genocidal.

7. The potential threat is not part of the normal evolution of the social and economic framework in which the property is situated

With reference to Paragraph 81(c) of the *Operational Guidelines for the Implementation of the World Heritage Convention* the Mirrar submit that the potential dangers to the cultural values of Kakadu National Park are not part of the “normal evolution of the social and economic framework in which” Kakadu National Park is situated.

The Mirrar have demonstrated that their country is Aboriginal land and that the normal evolution of the social and economic framework is of a kind in which bininj must decide on development issues in the region. Indeed it is the attempt by mining companies and their Government partners to impose an abnormal (balanda) social and economic framework on the region which lies at the heart of cultural deterioration in the World Heritage area. Mirrar contend that genocidal colonisation cannot be accepted as being part of the normal evolution of society.

The Mirrar contend further that it is not acceptable for Governments in Australia to force Aboriginal people to enter into mining agreements in order to receive basic citizenship rights (such as healthcare, access to communication technology, education, housing and basic utilities) which are provided by Government as of right to nearly all non-Aboriginal people.

In addition, it is not considered regular or publicly acceptable in Australia to conduct major mining operations within National Parks (let alone World Heritage Areas).

8. It is possible to assess the threat as to its effect on cultural properties.

With reference to Paragraph 81(c) of the *Operational Guidelines for the Implementation of the World Heritage Convention* the Mirrar do not believe it is impossible to assess the threat of the Jabiluka uranium mine on the cultural values of the Kakadu National Park as represented by the living tradition of Mirrar and other bininj.

The Mirrar believe they have adequately proved that both bininj and balanda evaluations of mining in the region demonstrate considerable negative impact from social, political and economic structures and consequences associated with mining.

It seems to Mirrar that the only organisations with vested pro-mining interests tend to obfuscate the negative impacts of mining with notions of universal social dysfunction.

9. The threats are imminent in nature and not merely anticipated.

With reference to Paragraph 81(c) of the *Operational Guidelines for the Implementation of the World Heritage Convention* the Mirrar they have demonstrated that the threats to cultural values posed by mining in the region are historical and ongoing and that the threats specifically related to the Jabiluka uranium mine are current and imminent.

The Mirrar do not believe there is any credible argument to dismiss the weight of evidence presented by the Mirrar that threats to living tradition posed by the Jabiluka uranium mine are already occurring and will worsen with the continuing development of the Jabiluka project.

10. A programme for corrective measures can be developed and adopted as a consequence of the mission's findings but this may not be possible to achieve with the full agreement of the State Party.

The Mirrar note that Paragraph 82 of the *Operational Guidelines for the Implementation of the World Heritage Convention* states that, as far as possible, a programme of corrective measures shall be developed in consultation with the State Party.

The Mirrar have clearly expressed that the key corrective measures required to reverse the decline of cultural values in the Kakadu World Heritage Area are the halting of the Jabiluka uranium project and reversion of the Jabiluka Mineral Lease to full Aboriginal control.

Since the election of the Liberal-National Coalition to Federal Government, the Commonwealth of Australia has adopted an openly pro-Jabiluka mine stance in the face of universal condemnation from opposition parties and a majority of the Australian population. Consequently, the Mirrar consider it unlikely that any of the corrective measures suggested in this submission will be agreed to by the Commonwealth or Territory Governments.

However the Mirrar do not believe that the recalcitrant position of the Commonwealth should prevent the World Heritage Committee from adopting a set of recommendations which are most likely to halt cultural decline in the Kakadu World Heritage Area. The Mirrar contend that the World Heritage Committee should adopt "best practice" corrective measures identified in this submission as the starting point in addressing the dangers to

World Heritage values, regardless of the pro-mining ideology of the current Federal Government.

11. Kakadu should be inscribed on the List of World Heritage in Danger as part of the program of corrective measures.

The Mirrar submit that the demonstrated impacts of mining, and in particular the Jabiluka uranium mine, on the living tradition of the Mirrar people meet the requirements for inclusion of Kakadu National Park on the List of World Heritage in Danger and that such listing should therefore take place as a matter of the highest priority.

Such listing is important for three main reasons. First, the inclusion of Kakadu National Park on the List of World Heritage in Danger will enable the Australian Government to reassess its approach to the Jabiluka issue against a backdrop of international opinion. It is certainly the case that the Australian Government has approved the development of Jabiluka almost entirely on the basis of domestic fiscal considerations. The Mirrar understand that governments are inclined to view the creation of wealth as a prime focus in the formulation of government policy. The Mirrar believe that inclusion on the World Heritage in Danger List will provide the opportunity for the Australian Government to give due consideration to non-fiscal factors (such as the survival of Indigenous culture) in the context of the international “peer review” process provided by the World Heritage Convention.

Secondly, the decision of the World Heritage Committee whether to include Kakadu on the List of World Heritage In Danger will be viewed as a precedent for Australia and other parties to the Convention considering major development projects in or near World Heritage Areas. If Kakadu is not included on the list despite the certain demise of the Mirrar living tradition as a result of mining at Jabiluka, the World Heritage Committee will effectively be giving the “green light” to wilful, negative impacts on the cultural values of all World Heritage Areas.

Finally, it is important for UNESCO to consider the administration of the World Heritage Convention consistently with the spirit and substance of other United Nations international Conventions, including the *International Covenant on Civil and Political Rights* and the *(Draft) Declaration on the Rights of Indigenous Peoples*. It would be a travesty of international justice if decisions made by one arm of the United Nations ran counter to the aims of other important international treaties.

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*N.B. While not all of the documents below were **directly** used in the creation of this submission, the following represents the documents which have been considered by the Gundjehmi Aboriginal Corporation in developing the rationale and recommendations contained in this submission in accordance with the established views of the Mirrar.*

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